

DEPARTMENT OF REAL ESTATE FORUM

Anaheim Marriott Hotel

January 27, 2006

1:00 – 2:30 p.m.

MEETING REVIEW

DRE Staff in Attendance: Commissioner Jeff Davi, John Liberator, Bill Moran, Fa-Chi Lin, Barbara Bigby, Jim Beaver, Don Pengilly and Lisa Stratton.

Opening Remarks:

Commissioner Davi opened the meeting at 1:05 p.m. with staff introductions. He acknowledged the attendance of former Commissioners Jim Antt and Paula Friendly (formerly, Paula Reddish Zinnemann). Commissioner Davi presented a statistical slide show to demonstrate the effect the current real estate market and historical licensee population is having on DRE's workload and related processing times. To address these challenges, the department continues to look for ways to improve processing times and increase efficiencies, particularly through the use of technology. To this end, the Commissioner stated the department is pursuing some important proposals, which John Liberator will set forth during the Operations Report.

Operations Report:

John Liberator, Chief Deputy Commissioner, began his report by addressing the department's fiscal status. Comparing the first six months of the 2005/06 fiscal year (July 1, 2005 through December 31, 2005), with the same time period in the 04/05 fiscal year, Liberator reported:

Revenue is up 18 percent, which continues to reflect the ongoing interest in real estate licensure.

Net Expenditures are down 3 percent.

Reserves are up 50 percent, at \$40,485,299, which sum does not include the \$10.9 million previously loaned to the State's General Fund. With respect to the loan, the DRE was recently contacted by the Department of Finance to determine if the DRE has a current fiscal need for the return of the funds. The department was unable to establish such a need due to the substantial balance of the reserves. As the budget language calls for the borrowed funds to be repaid upon a showing of fiscal need, it becomes a "rainy day" fund for the future.

As to the department's proposed budget for the 2006/07 FY, which begins July 1, 2006, the Governor's budget for 06/07 was released in early January. That budget now goes before the Assembly and the Senate. For the DRE, the budget reflects authorized expenditures of approximately \$43 million, which includes six budget change proposals (BCPs) the Commissioner has authorized the department to pursue. The proposals are:

- **Electronic Exam Project.** This project will eventually lead to immediate exam results and the issuance of a temporary license upon passage of the exam for those applicants who have met all the licensing requirements, including fingerprint clearance. This project will significantly improve examination processing times.

- **New Interactive Voice Response System.** The current system was designed and activated back in 1998, and the technology is no longer able to handle the large volume of calls received by the licensing and exams section. Between July and December 2005, the DRE received 712,400 calls (or 118,700 per month). This is a 16 percent increase over the number of calls received during the same period last year. The new system will help address the call volume, and resolve problems with the current system.
- **Refresh of the DRE's IT Infrastructure.** Current hardware and software are outdated and no longer supported by the manufacturer. The ability to upgrade the operating system is very limited, and detrimental to business operations.
- **Augment Information Technology Section by One Position.** This position will be dedicated to further development of the eLicensing System and the DRE website.
- **Augment Enforcement Staff.** This includes investigators, auditors, attorneys and support staff. It will allow for more timely processing of consumer complaints and address increased workload caused by the increased number of licensees. In 1991, the DRE had 411 staff and approximately 270,000 licensees. Today, we have 303 staff and 479,000 licensees. That's 200,000 more licensees and 25 percent less staff, without a lessening of responsibilities.
- **Augment Subdivision Staff.** This proposal will allow the DRE to provide more timely issuance of Public Reports so developers do not incur increased or unnecessary carrying costs.

Liberator advised that there is no guarantee that these proposals will survive the budget process, but the Commissioner and staff remain optimistic.

With respect to Licensing, again comparing July-December 2005 with the same time period in 2004, Liberator reported:

Salesperson exams are up 19 percent from last year (and up 65 percent from 2 years ago).

Broker exams are up 14 percent from last year (and up 39 percent from 2 years ago).

To give those numbers even more significance, more salesperson license applicants were tested in the first six months of the 2005/06 fiscal year than in the entire 1999/2000 and 2000/2001 fiscal years combined.

Original salesperson licenses issued up 15 percent.

Original broker licenses issued up 8 percent.

As to license renewals (the key is the percentage up for renewal who actually renew), the numbers have declined but are still good:

Salesperson license renewals went from 82 percent to 80 percent

Broker license renewals declined from 97 percent to 87 percent

The total licensee population as of December 31, 2005 was 476,244, which is a 14 percent increase from the licensee population on December 31, 2004. As of January 25, 2006, the population had already increased to 479,789. To put these numbers in perspective, in 1998, there were approximately 297,000 licensees; in 2000, approximately 307,000; in 2003, approximately 393,000; and in January 2006, we're at approximately 479,000 licensees. This equates to an increase of 182,000 licensees over seven years. The department is still projecting it will meet or exceed 500,000 licensees by the end of June.

As to the eLicensing system, statistics show that more and more licensees and examinees are using the system:

In FY 2003/04, 99,058 transactions were conducted online

In FY 2004/05, 349,686 transactions were conducted online

In the first six months of the 2005/06 FY, 266,214 transactions were conducted online, which represents approximately 42 percent of all renewals and 59 percent of all salesperson exams being scheduled or rescheduled online.

As to Subdivision activity, again comparing the first six months of the current fiscal year with the prior fiscal year, applications for subdivision public reports increased by 8 percent, from 2023 to 2184, due to the favorable real estate market.

With respect to Enforcement activity, for the period of July through December 2005, as compared to the same time period in 2004:

532 original licenses were denied as compared to 537 in 2004

319 existing licensees were disciplined as compared to 271 in 2004

As to Audit activity, 331 audits were conducted in July-December 2005, as compared to 326 during the same time period in 2004.

As to the DRE website, new additions/improvements include the 2006 Real Estate Law Book (paper copies should be available in early February for \$25 and includes the electronic version). The Department has also added its 2005/06 Strategic Plan. A new common license search function has been added which involves the Departments of Real Estate, Corporations, and Financial Institutions, and the Office of Real Estate Appraisers. This is a very helpful feature for consumers, especially when they are trying to determine the license status of a licensee or corporate entity in the mortgage lending or mortgage brokerage fields. A demonstration of this function will take place later on in the program.

Lastly, as to other items of interest, Liberator reported that in the mid-70's and early '90s, a total of \$900,000 was provided to the Community Colleges by the DRE in the form of an endowment to fund scholarships to economically disadvantaged students enrolled in real estate courses. In the 2004/05 fiscal year, 71 scholarships were awarded totaling \$41,600. A similar endowment totaling \$1,430,000 was made to the State University system in the mid-80's and early '90's. In 2004/05, 104 scholarships totaling \$60,550 were awarded through that endowment.

ENFORCEMENT CASES:

Bill Moran, Assistant Commissioner for Enforcement, reported on two cases which demonstrate the "creative" ways some licensees conduct their business. In both cases, these methods of doing business were illegal and resulted in the revocation of the brokers' licenses.

AUDIT CASES:

Fa-Chi Lin, Chief Auditor, discussed three recent audit cases involving trust fund embezzlement. In all cases, the licensees suffered the revocation of their broker licenses.

COMMON LICENSE SEARCH DEMONSTRATION:

Barbara Bigby, Assistant Commissioner for Administrative Services, reported that as part of the Business, Transportation & Housing Agency's Functional Integration Project, the Departments of Real Estate, Corporations, and Financial Institutions, as well as the Office of Real Estate Appraisers, unveiled a new consumer-oriented license search feature on their websites. This feature is accessed through the new California Real Estate and Financial Services button, which currently exists on the websites of all four departments. This new function allows consumers to perform common license searches, and retrieve summarized license records from all four departments. If needed, more detailed licensing information can be directly obtained from a single point of entry, rather than having to check each department's license database separately. This function will be helpful to consumers who are confused as to which department licenses a particular individual. Ms. Bigby provided a demonstration of the new Common License Search website feature.

OPEN FORUM:

Q) What is the DRE's position on a real estate licensee who is a registered sex offender and is able to have free access to people's homes?

Davi) The department doesn't have an official position, but in the cases that come across my desk for decision, my personal policy is that I seriously consider the fact that the respondent is required to register on the sex offender list. This is my personal policy, which means it could change under another Commissioner.

Q) With all the recent emphasis on proper identification of agents by use of the DRE number on contracts and other materials, is there any way you can integrate the license number into the search criteria of the common license search button?

Bigby) A meeting of the four departments' representatives is scheduled for the end of February, at which time we will be considering enhancement and change requests that have been received. We will include your request in that list for discussion.

Q) Is it still the DRE's policy that if a broker is found to be paying an unlicensed individual to do licensed acts, he is fined \$100, and the unlicensed person is fined \$10,000?

Davi) This isn't correct. DRE doesn't have standard fines, nor do we have the authority to discipline unlicensed individuals. Our only recourse against an unlicensed individual is the issuance of a Desist & Refrain Order. The Broker, however, is licensed and would be subject to disciplinary action.

Q) Under a former Commissioner, there was a case where the Broker was only sent a letter of reprimand. This broker subsequently released the unlicensed person, who now works elsewhere.

Davi) Disciplinary action is decided on a case by case basis, however, I can't speak to the policies of the former administrations.

Q) Is the DRE able to assist examinees who require special accommodations due to physical disabilities?

Bigby) Yes. Usually that type of information is helpful prior to scheduling the examination as special arrangements will have to be made. All of the exam facilities in our DRE offices and all our contracted exam facilities have special accommodations for those individuals with special needs. If you'll provide me with the individual's information, we'll contact him/her to make the arrangements.

Q) An exam applicant signed up for exam through eLicensing, but misspelled her name. How does she go about fixing the mistake?

Bigby) Its very important to proof information put into the eLicensing system prior to finalizing the transaction. If you provide me with the information, I'll see that it is corrected.

Q) More and more, we're seeing people who work for real estate companies selling loans without any training, and mortgage brokers going into real estate sales without any training. What is on DRE's agenda to address this problem?

Liberator) Under a real estate license, you can do a whole range of activity: residential sales, commercial, business opportunities, investment brokerage, etc. We've experienced this in the past. When the real estate market is very hot and the mortgage market is cool, licensees shift to real estate, and when the real estate market cools, they may shift back to the mortgage side. Some people will also turn to property management if the market tightens up as it provides more stable income. So as long as there is one license that allows for a multitude of disciplines and transactions, the problem will exist. Brokers are required by law to provide adequate supervision over their sales staff, be they salespersons or broker associates. The bottom line is that once an individual is licensed, the burden of training falls to the broker.

Q) One of the hot issues this week has been education. The flood of new agents coming in are oftentimes poorly trained and not qualified to hit the market. Does the DRE have any plans to make the examinations more relevant to what is going on in the current real estate market? Also, with respect to the 45 hours of continuing education required for license renewal, there are courses out there that offer 45 hours of education in one day, or less. What is your position?

Davi) With respect to the CE, we're working with industry to address your concerns. At the September meetings in San Diego, CAR brought forth some recommendations on CE requirements, and we're currently working through them to see if they can be implemented. As to the first part of your question, training of agents really falls upon all you – the brokers. DRE is required to enforce the law, require an exam, etc. Simply passing an exam doesn't mean new licensees are ready to do a transaction. Training a new licensee to handle that transaction is the broker's job. DRE is not in the training business.

Q) Can corporate license transactions be completed via eLicensing?

Bigby) Corporate transactions are not yet available online and part of the reason is that we simply do not have enough staff to do the development work. We've gone forth with the request for the additional position for next year that will help us meet some of the long-term goals that we have for eLicensing. This is definitely on our list of enhancements for the future.

Q) Regarding public report processing times, if I submitted a public report application on the first of February, and it was reasonably complete, what would I be looking at time-wise for the review of the application? How long would we be looking at until the issuance of the white report?

Davi) Timeframes vary depending on the completion of the application. If the application is submitted complete, without any deficiencies, the typical turnaround is 65-75 days, which is 50% of the statutory requirement. If the application is incomplete, a deficiency notice will be sent to the developer, and the clock stops until we receive the needed information.

Q) When you ask for additional information, when it comes back to you, at what point does the file get looked at again? Does it go to the bottom of the stack?

Davi) A particular deputy is assigned the file, so once he/she receives the information they requested, they would start work again on the file. If it took us 28 days to do the initial review and issue the deficiency letter, upon receipt of the information, the 29th day would begin.

Q) In the presentation you gave at the beginning of the meeting, you showed a pie chart. Most of the categories were explained, except for the one labeled "Other." What is included in that category?

Davi) That was a chart of the percentage of the cases that we see, separated by violation type such as criminal convictions, and trust fund mishandling. The Other represents violations of the real estate law, including misrepresentation and fraud, not otherwise set out on the chart.

Q) With the enormous amount of money in reserves, why can't the just DRE hire more people? Why does the money have to sit there until approval is given to spend it?

Davi) As John Liberator explained during his Operations Report, we are waiting for approval on six budget augmentations to increase staff in subdivisions, enforcement, audits and administration, as well as for the IT projects, which costs will come from our reserves. But these budget augmentations must be approved by the Legislature and make it through the budget process. Until such time, we are unable to hire more staff, even though we have the money in the reserves to do so. The budget augmentations put forth by the department amount to approximately \$12 million of our reserves.

Q) With regards to the loan to the General Fund, is there any way to get the money back without having to demonstrate a fiscal need? After all, this is our money.

Davi) I understand your concerns but it is not a question of if the State will pay back the funds. They have made it very clear that they will pay back the loan. But according to the bill language, repayment of the loan would be predicated upon a showing of fiscal need, and we can't currently show that need. The department is receiving interest on the money, and I don't think we're in jeopardy of not getting it back.

Q) If I'm a broker and want to become a corporation, do I have to get a corporate license?

Moran) If you're going to conduct your real estate license activity under a corporate entity, you need to get a corporate license. Since you're already a broker, what you need is a designated officer license to be the broker of that corporation. Then you would run all your business through the corporation, and the salespersons would be licensed to the corporate entity.

Q) Over the years, I've taken all varieties of training. There are a multitude of training courses available, including those where you can earn all 45 hours in a day or less. This type of training doesn't help us improve the image of our profession. This is supposed to be a profession where people know what they are doing. I took one of the new online training courses which actually require you to sit in front of the computer for 45 hours. I actually learned something and highly recommend them for your consideration.

Davi) Thank you.

Q) The business of Corporate licenses is an interesting one. I've had the occasion to have been the Designated Broker of the firm wherein the founding partner had a personal broker license and as well as a corporate license. He allowed his personal license to expire but still has the corporate license. When I left the firm as the designated broker, he simply assumed he could be the designated broker, and apparently its not possible to be the Designated Broker of a firm with a corporate license. Is that correct? The second part of my question is how does one renew a personal license if you've allowed it to expire while maintaining your corporate license?

Moran) Under these circumstances, once an individual is qualified to be a broker, and they chose to operate under a corporation as opposed to under a personal broker license, DRE doesn't require that they maintain both licenses. Someone could be the designated broker of a corporation for some time, then if they chose to go back and operate under a personal broker license, as long as they've maintained their qualifications and continuing education, renewed their license on time, it would be perfectly legal. They don't lose the rights to their personal license.

Q) Mr. Liberator spoke of a proposed electronic exam system. Has it been approved and when will it be in place?

Davi) The budget proposal is currently before the state legislature for approval. If it is approved, we will have the funding to put the system in place. We simply need the approval to spend the money. But this system probably won't be available statewide for 2-3 years. We will first set up a pilot project to test the system and work out the kinks. Only after the pilot project is considered a success will the system be opened up statewide.

Q) If DRE has \$40 million in reserves, why can't this be a capital expenditure from reserves rather than something that needs to get the approval of the Governor?

Davi) It is a capital expenditure from our reserves. Bottom line is, this is the way government operates. The department can't spend the reserves without the approval of the State Legislature.

Q) New licensees go through a higher security screening now than ever before. But with the long delays that can result, DRE doesn't even provide status report for the applicants, sometimes for as long as five months. What is your position on this?

Davi) Some cases are unique, but very simply, we just don't have the staff resources available to follow up with each and every applicant.

Moran) If the application was referred to the Enforcement Section due to past problems, or criminal convictions, the applicant would receive a letter setting forth the name of the assigned deputy and a phone number. But if the application is just stalled in Licensing, the receipt of fingerprint results could be the cause. This could simply be because the applicant has a very common name, and there are a lot of people out there with the same name, some of who may

have a criminal conviction, or there may be other problems with the courts reporting to the DOJ. In those cases, it's in our Licensing section, and as the Commissioner stated, workload simply prevents staff from issuing status reports.

Q) From the statistics provided, it appears that examinees fail the test an average of 3.5 times. Is that true?

Liberator) The pass rate is about 40 percent. Some examinees are successful the first time, while it may take others many times to pass it.

Q) There is a rumor going around that a four year degree will not necessarily qualify you to have a real estate license; there will be further education required. Any comments?

Davi) There isn't anything currently going on at the DRE to change this exemption. However, I was just informed by Stan Wieg that CAR is going to sponsor legislation that would eliminate the exemption.

Stan Wieg) Yesterday afternoon the legislative committee gave approval for CAR to sponsor legislation to repeal the exemption to the experience requirement for those with a four year college degree. The two-year general real estate experience requirement would apply to all broker applicants. The intention is to have those applicants with college degrees follow the same track to obtaining a broker license as those going through the sales license track.

Closing Remarks:

There being no further business, Commissioner Davi adjourned the meeting at 2:49 p.m.

Lisa Stratton
Recorder